



THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR
DIVISION OF OCCUPATIONAL SAFETY

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POLICY MEMORANDUM

TO: Heather Rowe, Program Manager
Employment Agency Program

FROM: Robert J. Prezioso, Commissioner

DATE: September 15, 2006

RE: interpretation of M.G.L. c. 140, § 46A exceptions to licensure

INTERPRETATION

In order to determine whether an agency needs to be licensed or registered, this policy will clarify the manner in which the exceptions to licensure may be applied. M.G.L. c. 140, § 46A ("the Statute") reads, in relevant part:

...however, that except with respect to the inspection authority of the commissioner under section forty-six Q, the term "employment agency" shall not include a firm (1) none of whose fees or charges are paid either directly or indirectly by any applicant for employment, unless such firm is engaged in providing domestic employees, (2) nor shall such definition apply to any person conducting a business which consists of employing individuals directly for the purpose of furnishing part time or temporary help to others or (3) to any person conducting a business which consists solely of providing employers or prospective employers, by electronic means, biographical information, background and experience of applicants for temporary employment, help or engagement. *(Numbers added for clarity.)*

The premise of the Statute is that all employment agencies—in the broadest sense of that term—must be licensed. However, some agencies may meet the exceptions listed in Section 46A, and if they meet any one or all of the exceptions, they must be registered pursuant to Sections 46B and 46Q, as well as 801 CMR 4.02.

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The first exception is to be interpreted in the following manner:

- Any agency that does not charge fees to job applicants or workers may be registered.
- This exception, however, does not apply to agencies placing domestic employees. These agencies must still be licensed unless they can show that they fall within the second or third exception.

The second exception is to be interpreted in the following manner:

- Any agency that employs workers directly AND only provides part-time or temporary help to others may be registered. This exception would apply even if an agency charges applicant fees and/or if an agency places domestic employees.

The third exception is to be interpreted in the following manner:

- Any agency that only provides to employers or prospective employers, by electronic means, biographical information, background, and experience of applicants for temporary employment, help, or engagement may be registered. This exception does not apply, however, if the agency in any way attempts to connect prospective workers with specific employers or clients seeking their services.

AGENCY INTERPRETATION OF TERMS

“Domestic employees,” for the purposes of the Statute, are workers providing services in a home. Such services include, but are not limited to: nannies (of all types—live-in, live-out, “night nannies,” etc.), elder care workers, home companions, personal care attendants, babysitters.

“Employs workers directly,” for the purposes of the Statute, means that an agency employs, pays, assigns, and provides workers’ compensation insurance for the workers (as required pursuant to M.G.L. c. 152, the Workers’ Compensation Act), and that they exercise some level of supervision over their workers on an on-going basis.

“Fee,” as defined in Section 46A(a) and (b) of the Statute means: “Any money or other valuable consideration paid or promised to be paid either by an applicant for employment or by an employer of an applicant for services rendered or to be rendered by any person conducting an employment agency under this chapter; (b) the difference between the amount of money received by any person

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who furnishes employees and the amount of money paid by him to such employee.”

“Part-time,” for the purposes of the Statute, means working fewer than thirty-five (35) hours per week.

“Statute,” the Employment Agency Statute, Mass. General Law, Chapter 140, Sections 46A-46R.

“Temporary help,” for the purposes of the Statute and in accordance with Section 46N, means assignments lasting fewer than ten (10) weeks.

“Part-time or temporary help to others,” for the purposes of the Statute, means part-time or temporary assignments, engagements, help, or jobs with each client.

PRACTICAL APPLICATION

Elder Care, Nanny, Babysitter, and other Domestic Service Agencies: If an agency provides domestic employees and directly employs its workers, it may be registered and not licensed only if all of the assignments given to workers are for part-time or temporary help to each of the agency’s clients. The agency may, indeed, have full-time employees who work thirty-five (35) or more hours per week for the agency; however, as long as those hours are not dedicated to only one client in any given week, they are still considered to be providing part-time help “to others,” and would therefore need to be registered. If, in this aforementioned scenario, a worker did work thirty-five (35) or more hours for one (1) client in any given week, if such services are not rendered in this manner for more than ten (10) weeks, this would be considered temporary help “to others,” and would therefore meet the exception to licensure.

Modeling Agencies: Agencies that place models must be licensed pursuant to the Statute. As such, agencies may charge an applicant fee of up to ten percent (10%) from the model’s wages or compensation, pursuant to Section 46L(C)(3), as long as they notify the model in writing of such fee. Modeling agencies that charge client fee(s) for any ancillary service(s) associated with any booking or engagement must disclose said service(s) rendered and said fee amount(s) in writing to the model pursuant to Section 46I and 46L(C)(3).